THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF BUS-TEV LLC, D/B/A EARLY MORNING SEAFOOD FOR REGISTRATION AS A WHOLESALE SEAFOOD BUSINESS AT THE NEW YORK CITY NEW FULTON FISH MARKET AT HUNTS POINT AND DENYING THE APPLICATION OF ERIC TEVROW FOR A PHOTO IDENTIFICATION CARD

Introduction

Local Law 50 of 1995 ("Local Law 50") and the rules promulgated thereunder require that seafood wholesale businesses within the Fulton Fish Market Distribution Area register with the Commissioner of the Department of Business Services. NYC Admin. Code §§22-209; 66 RCNY §§1-31(a), 1-32. The duties of the Commissioner of the Department of Business Services were later transferred to the Commissioner of the Organized Crime Control Commission ("Commissioner"), pursuant to a charter revision provision approved by the electorate in November 2001. The Organized Crime Control Commission was subsequently renamed the Business Integrity Commission, ("Commission") pursuant to Local Law 21 of 2002. The Fulton Fish Market Distribution Area was geographically relocated on November 13, 2005, and upon moving was renamed "The New Fulton Fish Market at Hunts Point." The City's full regulatory authority over the Fulton Fish Market Distribution Area was conferred upon The New Fulton Fish Market at Hunts Point, ("Fulton Fish Market" or "Market"), effective November 9, 2005. See 66 RCNY §1-58. On September 26, 2010, Title 66 of the Rules of the City of New York was replaced with Chapter 2 of Title 17 of the Rules of the City of New York.

The Commissioner may refuse to register a seafood wholesaler or a seafood deliverer in the Fulton Fish Market when any of its principals lacks good character, honesty and integrity. Admin. Code §§22-209(b), 22-211(b), 22-216(b). Administrative Code §22-216(b) lists a number of factors that the Commissioner may consider in making a fitness determination. Among the factors that the Commissioner may consider in determining the fitness of an individual or a market business are: failure by the applicant to provide truthful information in connection with the application (id. at §22-216(b)(i)), and the failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor .... Id. at §22-216(b)(vi). Local Law 50 makes clear that the Commissioner is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive.

For the independently sufficient reasons set forth in detail below, the Commission denies the seafood wholesaler registration application of Bus-Tev LLC, d/b/a Early Morning Seafood and the photo identification card application of Eric Tevrow:

(i) The Applicant engaged in unregistered activity at the Fulton Fish Market.

(ii) The Applicant's principal, Eric Tevrow, submitted false and misleading information to the Commission.

(iii) The principal of the Applicant, Eric Tevrow, was convicted of one count of Grand Larceny in the Second Degree, a class C felony and one count of Grand Larceny in the Third Degree, a class D felony.

(iv) The principal of the Applicant, Eric Tevrow, has had numerous judgments and liens filed against him by several government entities, and has failed to abide by the terms of his restitution agreement.

Background

On May 24, 2011, Eric Tevrow ("Tevrow") submitted an application on behalf of Bus-Tev LLC, d/b/a Early Morning Seafood ("Bus-Tev" or the "Applicant") for registration as a seafood wholesaler in the Fulton Fish Market. See Bus-Tev LLC, d/b/a Early Morning Seafood Public Wholesale Markets Wholesale Seafood Business Registration Application ("Application"). On June 20, 2011, Tevrow submitted an application for a photo identification card to operate in the Fulton Fish Market. A photo identification is required for anyone who "perform[s] any function directly related to the handling or transportation of seafood within or from" the Fulton Fish Market. See Admin. Code §22-203. The application Tevrow submitted for a photo identification card was in connection to Tevrow's supposed employment as a "Production Supervisor" for Alaskan Feast Inc., a wholesaler in the Fulton Fish Market. However, the Commission has not been able to find any evidence that Tevrow actually is or was ever employed by Alaskan Feast Inc. In fact, Tevrow's other submissions to the Commission indicate that he was never employed by Alaskan Feast Inc. See Application; Eric Tevrow Principal Information Form; November 3, 2011 Deposition Transcript of Eric Tevrow; Tevrow Questionnaire.

On January 3, 2012, the Commission's staff issued an eight page recommendation that Bus-Tev's application for registration as a seafood wholesaler and Eric Tevrow's photo identification card application be denied ("Recommendation"). The Applicant was given ten business days to submit a response. On January 20, 2012, the Applicant's attorney sent the Commission's staff an email message in which he stated, "that the previously filed request to [the Commission] to be registered as a Seafood Wholesaler be

and hereby is withdrawn."[1] See January 20, 2012 email message from Robert J. Costello to David Mandell. The Commission declined the Applicant's request to withdraw the application. See January 23, 2012 letter from David Mandell to Robert J. Costello. The Commission has carefully considered the Recommendation, and for the independently sufficient reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application as well as the photo identification card application of Eric Tevrow.

Basis for Decision

1. The Applicant engaged in unregistered activity at the Fulton Fish Market.

The Applicant was formed on March 14, 2008. See Application. On or about September 30, 2010 or October 1, 2010, the Applicant began to operate as a wholesale business in the Fulton Fish Market without registering with the Commission, as required by Local Law 50. See November 3, 2011 Deposition Transcript of Eric Tevrow ("Tevrow Tr.") at 7, 11; Application. Despite the fact that the Commission never granted the Applicant authorization to operate as a wholesaler in the Fulton Fish Market, the Applicant continued to do business as such. To facilitate the Applicant's unregistered operations, the Applicant leased space from another wholesaler in the Fulton Fish Market, Alaskan Feast Inc., a clear violation of the law. See Admin Code §22-209; Tevrow Tr. at 11. The Commission issued the Applicant numerous violations for this unregistered activity, yet nightly inspections revealed that Applicant continued to operate despite these violations.[2] See Notices of Violation and Hearing Numbers E 168 737 461; E 177 090 073; E 177 090 082; E 177 090 110; E 177 090 138; E 177 090 147; E 177 090 174; E 177 090 192; E 177 090 210; E 177 090 248; E 177 091 521.

The Applicant's open and notorious operation of an unregistered seafood wholesale business at the Fulton Fish Market for 14 months is the very conduct Local Law 50 was enacted to protect against. Local Law 50 unambiguously requires wholesalers to register with the City and allows wholesalers to sublease or assign their premises only to other wholesalers who are also registered with the Commission. This regulatory scheme was aimed at eliminating fraudulent business practices "such as the creation of 'phantom wholesalers' whose businesses disappear from the market before payment can be obtained from them for seafood they have received from suppliers...." See Admin. Code §22-201. Public confidence in the integrity of the Market would be undermined if those proven to have ignored the law receive registrations from the Commission, whose governing law and regulations they have persistently violated. By continuing to operate in violation of market rules and regulations, the Applicant has demonstrated the lack of good character, honesty and integrity necessary to operate such a business. The Applicant did not dispute this point, leaving this ground uncontested.

[1] The Applicant's attorney also stated that the Applicant moved its business "outside" the New Fulton Fish Market and asked for a refund of the application fee submitted by the Applicant. See January 20, 2012 email message from Robert J. Costello to David Mandell.

[2] The most recent Notice of Violation and Hearing was issued for unregistered activity on January 4, 2012.

Accordingly, the Commission denies the Applicant's registration application and Eric Tevrow's photo identification application on this independently sufficient ground.

2. The Applicant's principal, Eric Tevrow, submitted false and misleading information to the Commission.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §22-216(b). On June 20, 2011, Tevrow submitted a sworn photo identification card application ("Photo ID Application") to the Commission in which he certified that information provided in the Photo ID Application was true. However, a review of the Photo ID Application indicates that representations contained within the Photo ID Application were false and misleading. See Tevrow Photo ID Application, filed June 20, 2011.

The Commission's application for a photo identification card requires that an applicant list his or her current employer and his or her "complete work history for the last ten years."[3] See Photo ID Application at 4. On his Photo ID Application, Tevrow stated that since September 30, 2010, he is/was employed by Alaskan Feast Inc. as a "Production Supervisor." See Photo ID Application at 1, 4. The Commission, however, has yet to receive any evidence that Tevrow was ever employed by Alaskan Feast Inc.

As part of the Commission's wholesale seafood business registration application, an applicant is required to submit a Principal Information Form. While Tevrow was not required to submit a Principal Information Form in connection with his Photo ID Application, on May 24, 2011, Tevrow submitted one in connection with Bus-Tev's registration application. On this Principal Information Form, Tevrow certified that the information given in response to each question was "full, complete and truthful." See Principal Information Form at 17. Question 15 of the principal information form seeks information regarding an applicant's employment history, including current employment. See Principal Information Form at 4. While Tevrow identified nine of his past and present employers in response to Question 15, he did not list Alaskan Feast Inc. as ever being one of his employers. Id.

On November 3, 2011, Tevrow, in a Commission deposition, provided sworn testimony in connection with the Bus-Tev application. See Tevrow Tr. At his deposition, he was asked to identify every one of his employers since he left college in 1979. See Tevrow Tr. at 20. Again, Tevrow failed to identify Alaskan Feast Inc. as one of his past or present employers. See Tevrow Tr. at 11, 20-25. Furthermore, before his deposition began, Tevrow completed a questionnaire which he testified that he completed "truthfully to the best of [his] ability." See Tevrow Tr. at 44. Questions 45 and 50 of the questionnaire seek information about Tevrow's past and present employers. See Questionnaire at 9-10. Again, Tevrow did not disclose Alaskan Feast Inc. to be one of his past or present employers. Id.

[3] Upon submitting his Photo ID Application, Tevrow was issued a provisional photo identification card.

Given four independent opportunities to disclose Alaskan Feast Inc. as a past or current employer during the Commission's review of the Bus-Tev registration application, Tevrow never did. The logical conclusion from this omitted information is that faced with the requirement to submit certified information in the registration application and accompanying forms and sworn testimony in the deposition, Tevrow could not list Alaskan Feast Inc. as a past or current employer because he had never worked there.

Tevrow's inability or unwillingness to deal honestly with the Commission demonstrates Tevrow's lack of the requisite good character, honesty and integrity to operate a business regulated by the Commission. The Applicant did not dispute this point, leaving this ground uncontested. Accordingly, the Commission denies the Applicant's registration application and Eric Tevrow's photo identification application on this independently sufficient ground.

3. The principal of the Applicant, Eric Tevrow was convicted of one count of Grand Larceny in the Second Degree, a class C felony and one count of Grand Larceny in the Third Degree, a class D felony.

The Commission is expressly authorized to consider the commission of crimes by the applicant or any of its principals which, in light of the factors set forth in article 23-A of the Correction Law, would provide a basis under that statute for refusing to issue a license or registration. See Admin. Code §22-216(b)(iii). The factors set forth in article 23-A of the Correction Law are:

(a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license . . . sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

On December 7, 2007, Tevrow pleaded guilty in New York County Supreme Court, Criminal Term to one count of Grand Larceny in the Second Degree, a class C felony, and one count of Grand Larceny in the Third Degree, a class D felony, for failing to pay $1,113,071 in sales and payroll taxes to the New York State Department of Taxation and Finance between 2002 through 2007 when he was the owner of three seafood restaurants. See Plea Agreement dated December 7, 2007.

In pleading guilty, Tevrow admitted that,

> As the owner of Fresh, a Manhattan restaurant, as well as the owner of two other closed Manhattan restaurants – Coast and Shore – I know that I have the fiduciary duty to hold in trust sales tax collected from restaurant patrons and that I have an obligation to pay over that sales tax to the New York State Department of Taxation and Finance ("State Tax"). Nevertheless, I failed to do so at all three restaurants and during the period of December 1, 2002 through August 31, 2007 stole an amount in excess of $50,000 from State Tax, to wit $979,759.
>
> I know that I also have a fiduciary duty to hold in trust payroll tax withheld for my employees at these three restaurants and to pay over that payroll tax to State Tax. Nevertheless, I failed to do so at Coast Restaurant and during the period of September 1, 2004 through August 31, 2005 stole payroll tax in an amount in excess of $3,000 from State Tax, to wit $18,782.

See Allocution of Eric Tevrow.

Tevrow was sentenced to a conditional discharge for the Grand Larceny in the Second Degree charge and four months imprisonment for the Grand Larceny in the Third Degree charge.[4] As a condition of his plea, Tevrow also agreed to repay the sales tax owed in the amount of $979,759, and the payroll tax owed in the amount of $133,312 in accordance with a payment schedule arranged with the New York State Department of Taxation and Finance. See Plea Agreement. As part of his Plea Agreement, Tevrow

[4] The December 7, 2007 plea agreement was amended on September 22, 2008. The amended plea agreement provided that Tevrow was to complete an intermittent sentence commencing Friday evenings at or about 6:00 p.m. and concluding Sunday evenings at or about 6:00 p.m. for forty four weeks. See September 22, 2008 Amendment to Plea Agreement.

agreed to arrange for a payment schedule with the New York State Department of Taxation and Finance within three months of his release from prison. See Id.

The crimes charged against Tevrow and those to which he pleaded guilty are so closely related to both the purposes for which registration is sought and the duties and responsibilities associated with such registration, that they should preclude the grant of a wholesaler registration to this Applicant. Notably, the tax fraud stemmed from the ownership and operation of his seafood restaurants casting doubt on the Applicant's ability to operate his own business in the Fulton Fish Market responsibly. See N.Y. Correct. Law §753 (1)(b). Moreover, the crimes committed by Tevrow in the 2000s relate directly to the payment of debts - in this case tax debts - which has been a problematic issue in the public wholesale markets. See generally the Legislative Findings in Local Law 50 of 1995. Thus, the charges against Tevrow are antithetical to the very purpose of Local Law 50.

Given the history of the public wholesale markets, the public has a compelling interest in ensuring that services in the City are provided free of corruption. Registration of this Applicant is incompatible with that important objective. The 2007 felony conviction provides substantial evidence that both Tevrow and the Applicant lack good character, honesty, and integrity.[5] In addition, Tevrow has failed to abide by the terms of his plea agreement by failing to arrange for a payment schedule with the New York State Department of Taxation and Finance within three months of his release from prison. At his November 3, 2011 deposition, Tevrow testified that he was "never issued a payment plan," but sends $600 to $800 to New York State every month. See Tevrow Tr. at 37-39. However, Tevrow has not provided the Commission with any proof of the monthly payments he claims to make. The Applicant did not dispute this point, leaving this ground uncontested. Accordingly, the Commission denies the Applicant's registration application and Eric Tevrow's photo identification application on this independently sufficient ground.

4. The principal of the Applicant, Eric Tevrow, has had numerous judgments and liens filed against him by several government entities, and has failed to abide by the terms of his restitution agreement.

The Commissioner may deny a registration application based on the applicant's "failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefore, or for which judgment has been entered by a court..." Admin. Code §22-216(b)(vi). As Local Law 50 defines "applicant" as the business entity itself and all principals thereof, this application may also be denied based on the $3,070,724 in judgments and liens filed against Tevrow by the State of New York and the Internal Revenue Service. See Admin. Code §22-202(a); Admin. Code §22-216(b)(vi).

[5] It is worth noting that the crimes that Tevrow committed occurred when Tevrow was between 46 and 51 years old, belying any claim that this criminal conduct could be attributed to "youthful indiscretion." See N.Y. Correct. Law §753(1)(d) and (e).

A judgment and lien search conducted by the Commission on December 2, 2011 revealed the following outstanding judgments and liens have been docketed against Tevrow:

Internal Revenue Service: $72,190

- **Filing Date 10/6/11 - $67,997**
- **Filing Date 4/8/09 - $4,193**

State of New York: $2,998,534.80

- **Filing Date 4/8/08 - $102,590**
- **Filing Date 11/3/09 - $2,895,944.80**

Although Tevrow testified that he was aware that he owes the federal government taxes, he did not know how much, and, at the time of his deposition on November 3, 2011, he acknowledged he had not begun to pay these taxes back. See Tevrow Tr. at 39-40. On November 10, 2011, the Commission asked the Applicant to provide the Commission with proof that federal tax liens have been paid, are the subjects of documented payment plans, or have otherwise been resolved. See letter from David Mandell to Applicant. On December 17, 2011, the Applicant's accountant sent a letter to the Commission in response: "Eric Tevrow is attempting to resolve the two federal tax liens that your agency brought to his attention. He will file either an offer in compromise to settle these matters or file a request to abate civil penalties... At this date we are unsure which forms to file because we are awaiting copies of the liens from IRS. Telephone calls to the IRS on 12/16/2011 have elicited the information that these liens were filed to collect liabilities for civil penalties for the tax years 2003-2004-2005. IRS will be contacted on 12/19/11 and hopefully they will fax the documents. I have a meeting scheduled with Eric [Tevrow] on 12/20/11 and at that time either an old form or a request for abatement will be prepared." See December 17, 2011 letter from Joseph Gallagher. On December 20, 2011, the Applicant's accountant sent a letter to the Commission that stated: "Eric Tevrow is attempting to resolve the two federal tax liens that your agency brought to his attention. The federal tax liens were filed as the result of civil penalties assessed by the IRS. Enclosed are copies of the IRS forms 843 requesting abatement of the penalties." See December 20, 2011 letter from Joseph Gallagher.

The judgments and liens filed against Tevrow total $3,070,724. These judgments and liens include the tax liabilities that were the basis for Tevrow's criminal conviction. The Applicant did not dispute this point, leaving this ground uncontested. Accordingly, the Commission denies the Applicant's registration application and Eric Tevrow's photo identification application on this independently sufficient ground.

Conclusion

Based on each of the independently sufficient reasons stated above, none of which are disputed by the Applicant, the Commission finds that Bus-Tev LLC, d/b/a Early Morning Seafood and Eric Tevrow each lack good character, honesty and integrity. Accordingly, the Commission denies Bus-Tev's application for registration a seafood wholesale business in the Fulton Fish Market and Eric Tevrow's photo identification card application.

Dated: February 7, 2012

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
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